

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT ALAN GIBBS,

No. 2:21-cv-00027 WBS CKD P

Petitioner,

v.

SHASTA COUNTY SUPERIOR COURT,

ORDER AND
FINDINGS AND RECOMMENDATIONS

Respondent.

Petitioner has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On February 23, 2021, the court recommended that this action be dismissed for plaintiff's failure to pay the filing fee for this action or submit a request to proceed in forma pauperis. As petitioner has now paid the filing fee, the court's recommendation will be vacated.

Under Rule 4 of the Rules Governing Section 2254 Cases, the court must review all petitions for writ of habeas corpus and summarily dismiss any petition if it is plain that the petitioner is not entitled to relief. The court has conducted that review.

The exhaustion of state court remedies is a prerequisite to the granting of a petition for writ of habeas corpus. 28 U.S.C. § 2254(b)(1). A petitioner satisfies the exhaustion requirement by providing the highest state court with a full and fair opportunity to consider all claims before presenting them to the federal court. Picard v. Connor, 404 U.S. 270, 276 (1971).

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Petitioner's petition for writ of habeas corpus reveals he has not exhausted state court remedies with respect to any of his claims. Accordingly, the petition must summarily be dismissed.

The court notes that petitioner has requested that he be permitted to file documents electronically in this matter. In light of the foregoing, petitioner's request will be denied. If this action does proceed further on petitioner's claims, petitioner may renew his request.

In accordance with the above, IT IS HEREBY ORDERED that:

1. The court's February 23, 2021 findings and recommendations are vacated;
2. Petitioner's motion for leave to proceed in forma pauperis (ECF No. 8) is denied as moot.

3. Petitioner's request that he be permitted to file documents in this action electronically (ECF No. 9) is denied without prejudice.

IT IS HEREBY RECOMMENDED that:

1. Petitioner's petition for a writ of habeas corpus be dismissed for failure to exhaust state court remedies; and
2. This case be closed.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, petitioner may file written objections with the court. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." In his objections petitioner may address whether a certificate of appealability should issue in the event he files an appeal of the judgment in this case. See Rule 11, Federal Rules Governing Section 2254 Cases (the district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant). Where, as here, a habeas petition is dismissed on procedural grounds, a certificate of appealability "should issue if the prisoner can show: (1) 'that jurists of reason would find it debatable whether the district court was correct in its procedural ruling;' and (2) 'that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right.'"

Morris

v. Woodford, 229 F.3d 775, 780 (9th Cir. 2000) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)). Petitioner is advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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Carol K. Delaney

CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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